IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.764 OF 2005

M/s.Star Builders & Anr. .. ..Appellants
Versus
Sudhir Shivaji Kotwal .. ..Respondent

Mr.P.J.Pawar for appellants
Mr.Kishor Patil for respondent

WITH

SECOND APPEAL NO.768 OF 2005

M/s.Star Builders & Anr. .. Appellants
Versus
Sudhir Shivaji Kotwal .. Respondent

Mr.P.J.Pawar for appellants
Mr.Kishor Patil for respondent

CORAM : P.V.KAKADE, J.

DATE : 8TH SEPTEMBER, 2005

P.C.:

1. Both these appeals are heard and being disposed of by this common judgment as they arise out of common judgment of the lower appellate court and parties are same as well as the suit property and issues involved are also the same.

. The present appeals are preferred by the appellants

against the judgment and order passed by Addl. District Judge, Nasik allowing Reg. Civil Appeal No.294 of 2003 and dismissing the Reg.Civil Appeal No.298 of 2003 arising out of the common judgment passed by trial court in Reg. Civil Suit No.666 of 2001 passed by Civil Judge, Junior Division, Nasik.

2. I have heard the learned counsel for both the parties. Perused the record including the judgments of both the courts below.

3. The plaintiff filed the suit for mandatory injunction and possession. Plaintiff came with the case that he was in need of residential flat and approached the defendant, who is in building business, entered into an agreement for purchase of the flat. The total price of the flat was agreed at Rs.5,25,000/= and accordingly the plaintiff made payment on 10.11.2000 by cheque drawn on Indian Bank. the defendant no.1 issued receipt of the first payment on 16.2.2001. the defendant tried to prolong execution of registered agreement deed and after repeated requests executed the agreement on 29.12.2000. At that time plaintiff obtained loan of Rs.2,50,000/= from H.D.F.C. and defendant no.1 was paid Rs.2,00,000/=

in May 2001. The plaintiff has issued letter dated 10.12.2001 to the HDFC intimating them to left blanche of Rs.50,000/= as last and final instalment. It was urged that inspite of regular stagewise payment made by the plaintiff the defendant did not hand over the possession of the flat by 30.6.2001. The plaintiff had paid Rs.3,35,001/= to the defendants plus the payment of Rs.2,50,000/= was agreed to be paid by HDFC. The said payment were including electricity connection, water connection and extra items. The defendant did not issued receipts of the payment made on 29.12.2000 and 20.4.2001. The plaintiff had given cheque dated 15.4.2001 to the defendant for Rs.60,000/= but the same was returned. The payment was made in cash of Rs.60,000/= on 20.4.2001 and paid in presence of two witnesses. Inspite of regular payment and repeated requests the defendants neglected to deliver the possession of the suit flat and hence the suit came to be filed. The defendants contested the suit, inter alia, denying the allegations made by the plaintiff and contended that the payments were not made and hence possession was not given.

. The learned trial judge adjudicated the dispute

on merits and came to the conclusion that the plaintiff had not proved that he himself or through H.D.F.C. he made regular payments towards price of the suit flat as per the stages prescribed under the suit agreement, as alleged. It was also held that the plaintiff failed to prove that the was ready and willing to perform his part of contract. However, it was held that the plaintiff was entitled for injunction and possession of the suit flat and order came to be passed to the effect that the defendant to deliver the actual possession of the suit flat to the plaintiff on balance payment of Rs.1,10,000/= plus Rs.40,000/= towards the expenses of extra work and other consequential reliefs. The deposited amount was directed to be adjusted with the entire payment. Both the parties carried the appeals to the District Court. The learned District Judge after hearing both the parties came to the conclusion that the suit of the plaintiff deserved to be decreed and defendant nos.1 and 2 were directed to hand over actual possession of the suit flat to the plaintiff and defendants were given liberty to recover the amount of expenditure made towards the extra work. It was further directed that the amount, if any, regarding the litigation be refunded to the plaintiff with interest at

the rate of 6% p.a. from the date of the receipt of the said amount till its realisation and the other consequential reliefs also came to be passed. Hence, the two appeals have been filed by the original defendants.

4. At the outset it must be noted that there is no substantial question of law involved in both these appeals. The learned counsel for the appellants submitted that the findings recorded by the lower appellate court judge were perverse in the sense that he did not properly appreciate the entire factual aspects of the evidence and reverted the findings recorded by the trial court on certain aspect, which were contrary to the evidence on record. However, on perusal of the entire judgment of the lower appellate court judge, it is found that he has taken into account all the material aspects on record and therefore, it cannot be said that there is no proper appreciation of the entire evidence by the lower appellate court jduge. In this regard it must be noted that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In a case where from a

given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. This principle is squarely applicable to the present case and in the result I do not see any interference is required by this Court in both the appeals. Both the appeals stands dismissed with no order as to costs.

5. Consequently Civil Application No.1277 of 2005 and Civil Application No.1213of 2005 also stands dismissed with no order as to costs.